

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

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Falls Church, Virginia 22041

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File: [REDACTED] Houston

Date:

DEC 29 1998

In re: [REDACTED]

IN DEPORTATION PROCEEDINGS

APPEAL/MOTION

ON BEHALF OF RESPONDENT: Iris Juarbe, Esquire

ON BEHALF OF SERVICE: Merilee Fong
Assistant District Counsel

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] -
Entered without inspection

APPLICATION: Asylum; withholding of deportation

I. BACKGROUND

The respondent appeals from a decision of an Immigration Judge dated August 25, 1995, finding him deportable under section 241(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1251(a)(1)(B). The Immigration Judge also denied the respondent's applications for asylum and withholding of deportation to Honduras under sections 208 and 243(h) of the Act, 8 U.S.C. §§ 1158 and 1253(h), respectively. The respondent was granted relief in the form of voluntary departure under section 244(e) of the Act, 8 U.S.C. § 1254(e). On January 16, 1997, the Immigration and Naturalization Service filed a motion requesting that we consider its late filed brief. We will grant the motion. The appeal will be dismissed.

We will first consider the Service motion. The Service requested that we consider its late filed brief and provided ample reasons in favor of such action. The Service indicates that the brief was filed late owing to the heavy Christmas mail load and delay arising from the Service waiting for the respondent to file his brief, which was not forthcoming. We find these reasons sufficient for granting the motion.

The respondent is a 41-year-old male who is a native and citizen of Honduras. He entered the United States without inspection on November 6, 1990. The respondent conceded deportability at the proceeding (Tr. at 2). We find that deportability has been established by clear, unequivocal, and convincing evidence as required by Woodby v. INS, 385 U.S. 276 (1966), and 8 C.F.R. § 242.14(a). The issue raised on appeal is the denial of asylum and withholding of deportation relief.

II. THE RESPONDENT'S EVIDENCE

The respondent's requests for asylum and withholding of deportation relief rest upon his testimony and the information provided in his submitted Form I-589 (Request for Asylum in the United States). The record contains a response from the United States Department of State's Bureau of Democracy, Human Rights and Labor (DHL) pursuant to C.F.R. § 208.11. The DHL submitted a document entitled "Honduras: Profile of Asylum Claims and Country Conditions." The document is dated June 1995.

In the Form I-589, the respondent stated that he will be persecuted if returned to his native country due to his membership in a particular social group. The respondent reported his involvement in a labor union at a government-owned company where he worked as a welder. He indicated that he was involved in the recruitment process. The respondent indicated that management attempted to stifle the union and when such was unsuccessful, the local police were sent to harass members of the union. The respondent stated that the police searched his home for weapons and also made threats against him. He indicated that he was also physically and emotionally mistreated by the police. He said that another member of the union died due to police beatings.

The testimony given at the hearing generally tracked with the information presented in the application. The respondent provided further detail regarding his employment and the labor union. He stated that he worked at the Lumber Factory Lamas and that the union was created in July 1990. The union was called Unala (Tr. at 10). The respondent again indicated that he was a recruiter for the union (Tr. at 11). The police began to harass the union members and the respondent described his beating by the police (Tr. at 14-15). The respondent indicated that if returned to Honduras he would not return to the same place he lived or worked before but would continue try to find employment as a welder (Tr. at 34).

III. APPLICABLE LAW

The respondent bears the evidentiary burdens of proof and persuasion in any application for withholding of deportation under section 243(h) or asylum under section 208 of the Act. Matter of Acosta, 19 I&N Dec. 211 (BIA 1985); 8 C.F.R. §§ 208.5, 242.17(c).

To be eligible for withholding of deportation pursuant to section 243(h) of the Act, an alien's facts must show a clear probability of persecution in the country designated for deportation on account of race, religion, nationality, membership in a particular social group, or political opinion. INS v. Stevic, 467 U.S. 407 (1984). This means that the alien's facts must establish that it is more likely than not he or she would be subject to persecution for one of the grounds specified.

To be eligible for asylum under section 208 of the Act, an alien must meet the definition of a "refugee," which requires him or her to show persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Section 101(a)(42)(A) of the Act, 8 U.S.C. § 1101(a)(42)(A); section 208 of the Act. The burden of proof required to establish eligibility for asylum is lower than that required for withholding of deportation. INS v. Cardoza-Fonseca, 480 U.S. 421 (1987). An applicant for asylum has established a well-founded fear if he shows that a reasonable person in his circumstances would fear persecution for one of the five grounds specified in the Act. Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987).

As this case arises in the Fifth Circuit, we must also consider its precedent decisions. See Matter of Cazares-Alvarez, Interim Decision 3262 (BIA 1996); Matter of Kim, 17 I&N 144 (BIA 1979). The United States Court of Appeals for the Fifth Circuit has stated that an applicant for asylum has established a well-founded fear of persecution if he shows that a reasonable person in his circumstances would fear persecution. This standard is only partially subjective in that the alien's fear must also have some basis in the reality of the circumstances; mere irrational comprehension is insufficient to meet the alien's burden of proof. Guevara-Flores v. INS, 786 F.2d 1242, 1249 (5th Cir. 1986), cert. denied, 480 U.S. 930 (1987). The alien must also establish that the feared persecution is on account of one of the five enumerated factors. Campos-Guardado v. INS, 809 F.2d 285, 291 (5th Cir. 1987) cert. denied, 484 U.S. 826 (1987). This requires a showing by the alien that harm or suffering will be inflicted upon him in order to punish him for possessing a belief or characteristic a persecutor sought to overcome. Faddoul v. INS, 37 F.3d 185, 188 (5th Cir. 1994); Guevara-Flores v. INS, supra at 1249. At a minimum, there must be some particularized connection between the feared persecution and the alien's race, religion, nationality, or other listed characteristic. Demonstrating such a connection requires the alien to present specific, detailed facts showing a good reason to fear that he or she will be singled out for persecution. Faddoul v. INS, supra.

IV. THE IMMIGRATION JUDGE'S DECISION

The Immigration Judge found that the respondent established past persecution but denied the relief because there was not a reasonable possibility that he would be persecuted if returned to Honduras. Following finding that the respondent was deportable, the Immigration Judge set out the documents which comprise the record. The Immigration Judge did not set forth the law

regarding asylum but instead incorporated into the record a document entitled "Summary of Asylum Law." The Immigration Judge found the respondent credible and noted that his testimony was internally consistent and agreed with the documentation presented.

The Immigration Judge then set forth his findings and conclusions. He summarized the evidence set forth by the respondent, focusing on the union and the respondent's involvement with such. The Immigration Judge then set forth the two incidents involving the police as described by the respondent. These incidents consisted of the appearance of the police at his residence, the police search of his home, and a beating. The Judge noted that it was after the beating and the death of a fellow union member while in the custody of the police that the respondent departed Honduras. The Immigration Judge then noted that the respondent's claims were in line with the information contained in the documents supplied by the Department of State. These documents substantiated the respondent's claim that the police often become involved on behalf of employers in the attempt to discourage unions through violence and intimidation.

The Immigration Judge then found that the respondent had suffered past persecution on the basis of his membership in a particular social group. The Immigration Judge noted that there was no evidence before him that conditions in Honduras had changed so that the respondent might not suffer the same problems which precipitated his departure from Honduras. The Immigration Judge then indicated that the respondent's claim failed because he could not show a reasonable possibility that the persecution will occur again unless he involves himself with a union in a company which is antagonistic to unions. The Judge noted that the respondent specifically indicated in his testimony that he is not likely to renew unionizing activities. The Immigration Judge concluded there was no reasonable possibility of persecution in the future, and so the relief was denied. The Immigration Judge concluded that the respondent did not qualify as a refugee under the Act and so did not consider the application in the exercise of discretion.

CONTENTIONS ON APPEAL

On appeal, the respondent asserts that the Immigration Judge erred by denying his application for asylum because he was persecuted and beaten by the Honduran police due to his participation with a labor union. He also asserts that the denial was in error because he had to leave his country in order to save his life.

BOARD RESOLUTION

We will dismiss this appeal. The contentions raised are a mere summation of the evidence placed before the Immigration Judge and, without elaboration, we are unable to make any meaningful response to them. The Immigration Judge's opinion, in which we concur, was well within the authority established by pertinent regulations and case law. Following his conclusion that the respondent established past persecution, the Immigration Judge considered

whether the respondent had a well-founded fear of persecution as directed by 8 C.F.R. § 208.13(b).¹ See In re C-Y-Z, Interim Decision 3319 (BIA 1997); In re H, Interim Decision 3276 (BIA 1996); Matter of R-, 20 I&N Dec 621 (BIA 1992). The Immigration Judge correctly determined that the respondent did not establish a well-founded fear of future persecution with his statement that he would not return to his former place of employment or engage in further union activities. There is not a reasonable possibility of actually suffering such persecution if returned to Honduras. We have considered the Service motion that this appeal be summarily dismissed but decline to do such. The relief was properly denied. The following orders are entered:

ORDER: The motion is granted.

FURTHER ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and in accordance with our decision in Matter of Chouliaris, 16 I&N Dec. 168 (BIA 1977), the respondent is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be granted by the district director; and in the event of failure so to depart, the respondent shall be deported as provided in the Immigration Judge's order.



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¹ 8 C.F.R. § 208.13(b) (1998) provides in relevant part: (ii) An application for asylum shall be denied if the applicant establishes past persecution under this paragraph but it is determined that he or she does not have a well-founded fear of future persecution under paragraph (b)(2) of this section, unless it is determined that the applicant has demonstrated compelling reasons for being unwilling to return to his or her country of nationality or last habitual residence arising out of the severity of the past persecution. If the applicant demonstrates such compelling reasons, he or she may be granted asylum unless such a grant is barred by paragraph (c) of this section.

(2) Well-founded fear of persecution. An applicant shall be found to have a well-founded fear of persecution if he or she can establish first that he or she has a fear of persecution in his or her country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion, second, that there is a reasonable possibility of actually suffering such persecution if he or she were to return to that country, and third, that he or she is unable or unwilling to return to or avail himself or herself of the protection of that country because of such fear.